tuted by the present liquidators by the order of the court dated 28th May, 1962. So the present liquidators were appointed at the time when the court ordered that the voluntary winding up of the company was to be continued but subject to the supervision of the court and they were not liquidators whose services were continued by that order. Therefore, section 251(3) had no application to the present liquidation.

The present liquidators cannot be removed by an order of the court under any provision of the Companies Ordinance, 1940-1946.

The only other prayer which remains is for the appointment of an additional liquidator. Section 251(1) of the Companies Ordinance provided that "Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator." That section conferred a discretionary power on the court, the exercise of which must depend on the merits of each case. In the present application, the liquidation had been completed to all intents and purposes. All the claims had been dealt with by the present liquidators and the verified claimants had been paid. The first and final dividend was in fact declared in August 1964, more than a year before the applicants took out the present application. In the circumstances, no useful purpose can be served by the appointment of an additional liquidator.

As to the question of costs, the company now has no assets. No order as to costs.

Application refused.

Solicitors: *N. Sharma; Shearn, Delamore & Co.*

AHMAD BIN UDOH & ANOR. v. NG AIK CHONG

[A.C.J. (Wan Suleiman J.) May 17, 1969]
[Alor Star — Civil Appeal No. 3 of 1968]

Contract — Illegal agreement — Frustration of contract — Whether party to it entitled to recovery of money paid under the agreement — Contracts (Malay States) Ordinance, 1950, s. 66.

The respondent entered into an agreement with the appellants for a lease of padi land for a period of six years. Pursuant to the agreement, a sum of $1,500 was paid to the appellants. The appellants subsequently refused to allow the respondent to till the land.

In an action for the recovery of the sum paid under the agreement, the Sessions Court gave judgment in favour of the respondent. On appeal from that decision the appellants raised a ground which was not pleaded in the court below — i.e., that the agreement was illegal for contravening section 3(1) of the Padi Cultivators Ordinance, and the sum paid under the illegal agreement was not recoverable by the respondent.

Held, dismissing the appeal: (1) in English law, money paid in consideration of an illegal purpose which is not accomplished is not recoverable unless, the scheme is frustrated by reason of the plaintiff's repentence. Under section 66 of the Contracts (Malay States) Ordinance, 1950, all that need be proved is that the illegal purpose has not been achieved;

(2) the agreement was one which came within the ambit of the words "if discovered to be void" in section 66 of the Ordinance. The respondent, was therefore entitled to the refund of the money paid under the illegal agreement.

Cases referred to:—

(1) *Snell* v. *Unity Finance Ltd.* [1963] 3 All E.R. 50.

(2) *Bigos* v. *Bousted* [1951] 1 All E.R. 92.

(3) *Harmath Kaur* v. *Inder Singh* (1922), L.R. 50 I.A. 69.

CIVIL APPEAL.

R.C. Murugeson for the appellants.

Karpal Singh for the respondent.

Cur. Adv. Vult.

Wan Suleiman J.: The appellants/defendants are, according to the statement of claim and in their testimony before the Sessions Court, the registered proprietors of lands held under S.P. Nos. 15408 and 24189, Mukim Tajar.

According to the respondent/plaintiff by an agreement dated the 12th of March, 1965 entered into between him and the defendants/appellants, the latter agreed to lease two pieces of land for a period of six years at a rental of $250 per annum commencing from the padi season in 1965, upon the execution of which agreement the plaintiff/respondent paid to the appellants the sum of $1,500 the agreed rental for the period of six years. In May 1965 the respondent asked one Baharom to plough the land for him. Baharom was prevented from working on the land by the first appellant.

The respondent subsequently tried to persuade the appellants to allow him to till the land without success and this action was brought to obtain the refund of the sum of $1,500 which the respondent claimed he paid to the appellants.

The learned Senior President on considering the statement of defence rightly, in my opinion, held that there had been non-compliance with Order 10 rule 4(a) & (b) (which pertains to pleadings) of the Subordinate Courts Rules, 1950. In consequence the appellants/defendants were precluded from defending the claim under Order 10 rule 7 of the Subordinate Courts Rules and the court struck off the defence under Order 36 rule 14(a), and after taking the plaintiff's evidence the Senior President gave judgment in his favour for the sum of $1,500 and costs.

In his memorandum of appeal counsel for the appellants did not attack the decision on precedural grounds but asserted what had not been raised in the court below, namely, that the agreement referred to by the respondent dated the 12th March, 1965 was void and unenforceable being "*ex facie* unlawful as its object contravened and/or was to defeat the provisions of the Padi Cultivators Ordinance 1965."

I am satisfied that even though the question of illegality of the contract was not raised in the court below this court can take cognisance of such fact. It is clear that the agreement being for a period of six years contravenes section 3(1) of the Ordinance and make both the parties thereto liable to the penalty imposed under section 16(2). Though there is no evidence to indicate that either party was aware and indeed I believe that both parties were completely unaware of that provision of the Ordinance, the agreement is nevertheless void. Mr. Murugeson for the appellants cited a number of authorities of which I need mention only two. In *Snell* v. *Unity Finance, Ltd.*[1] an action for damages arising out of the condition of a car sold to a purchaser under a hire-purchase agreement, the plaintiff hire-purchaser gave evidence which was accepted by the county court that, in order to avoid the requirement of a minimum deposit by the Hire-Purchase and Credit Sale Agreements (Control) Order, 1960, the cash price of the car was stated in the agreement as £210 and the deposit as £50 instead of the true amounts of £185 and £25 which last sum was less than the minimum deposit required by the Order. The plaintiff paid in cash only the £25. Illegality of the agreement was not pleaded and was not raised in the county court, where judgment was given for the plaintiff. On appeal by the defendant hire-purchase company, it was held by the Court of Appeal that once the facts which made the hire-purchase agreement illegal had become apparent to the county court it was the court's duty, whether illegality was or was not raised by the parties, to refuse to enforce the hire-purchase agreement.

In *Bigos* v. *Boustead*[2] the facts are as follows:—

"In 1947 the defendant was anxious to send his wife and daughter abroad for the sake of the daughter's health. Owing to the restrictions on English currency which were then in force he was unable to obtain from the treasury what he considered an adequate allowance to enable them to stay abroad sufficiently long for the visit to be of benefit to the daughter, and on August 25, 1947 he entered into an agreement with the plaintiff in contravention of the Exchange Control Act 1947 section 1(1) whereby the plaintiff agreed to make available £150 worth of Italian money for the wife and daughter in Italy within a week and the defendant promised to repay her with English money in England. As security for his promise the defendant deposited with the plaintiff a share certificate for 140 shares in a company. On August 28 the defendant's wife and daughter went to Italy but the plaintiff failed to make any Italian money available for them, and on October 13 they returned to England sooner than they would have returned, if they had had the money. The defendant then asked the plaintiff to return to him his share certificate but she refused to do so. In an action by the plaintiff to recover the sum or £150 from the defendant on the ground that she had made a loan to him of that sum, the defendant denied the loan, set out the true facts of the transaction, and counter-claimed for the return of the certificate. The plaintiff abandoned her claim at the commencement of the hearing of the action, but the defendant proceeded with the counter-claim and contended that, although the contract was an illegal one, as it was still executory he was allowed a *locus poenitentiae* and therefore he was entitled to claim the return of the certificate."

It was held that the reason that the illegal transaction was not carried out was due, not to any repentence on the part of the defendant, but to the frustration of the contract by the plaintiff, and therefore, as the agreement relating to the deposit of the share certificate was one which sprang from the main illegal agreement and was tainted with the same illegality as that which attached to that agreement, and as the parties were in *pari delicto* at the time of making the agreement, the defendant was not entitled to seek the aid of the court to recover the certificate.

However, even under English law money paid in consideration of an executory contract or purpose which is illegal may be recovered upon repudiation of the transaction as upon a failure of consideration. (See *Pollock & Mulla* on Indian Contract and Specified Relief Acts, 8th Edn. p. 391). The commentary therein on section 65 of the Indian Contract Act which is identical with our section 66 goes on to state at page 392:—

"In cases where the illegal purpose has not been accomplished, English law examines the reason which led to the failure of the unlawful project. There must be repentence by the plaintiff, and where the scheme has been frustrated by the vigilance of third parties or a change of mind on the part of the defendant, the plaintiff cannot recover. In India it suffices for the plaintiff to establish that the illegal purpose has not been achieved for whatever cause."

There can be no doubt whatsoever that the agreement is one which is covered by the words "if discovered to be void" in section 66 of our Contract (Malay States) Ordinance. As was said by their Lordships of the Privy Council in *Harnath Kaur* v. *Inder Singh*[3] wherein a claim based on section 65 of the Indian Contract Act was considered —

"an agreement, therefore, discovered to be void is one discovered to be not enforceable by law, and on the language of the section, would include an agreement that was void in that sense from its inception as distinct from a contract that becomes void."

Since, in my view, our law in this respect coincides with the Indian law, all that needs

to be proved is that the illegal purpose had not been achieved. The question as to whether the parties were in *pari delicto* does not arise.

This appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *R.C. Murugeson; Raja Mohamed Redzuan bin Raja Yaacob.*

CHIEF BUILDING SURVEYOR v. MAKHANLALL & COMPANY LTD.

[F.C. (Tan Ah Tah F.J., Winslow & Choor Singh JJ.) May 22, 1969]

[Singapore — Federal Court Appeal No. Y50 of 1968]

Administrative law — Certiorari — Order of magistrate's court under section 63(4) of the Local Government Integration Ordinance, 1963 — Order to demolish building — Whether audi alteram partem rule applicable to proceedings before magistrate — Certificate of Building Surveyor not in compliance with the Ordinance — Requirement of natural justice — Locus standi of occupier of building.

Local Authority — Demolition order — Prohibition and closing orders — Natural justice — Local Government Integration Ordinance, 1963, s. 63(4) and (5).

This was an appeal against the order of *certiorari* made by the learned Chief Justice ([1969] 1 M.L.J. 36). The learned Chief Justice held that the magistrate's court deciding the matter under section 63 of the Local Government Intergration Ordinance, 1963 was under a duty to act judicially; that the certificate of the chief surveyor was not a certificate as required under the Ordinance; and that the magistrate's court acted in excess of its jurisdiction in making the two orders. On appeal it was argued *inter alia* that the defect in the certificate of the chief building surveyor was not fatal and that the magistrate's court was under no duty to act judicially.

Held, dismissing the appeal: (1) the orders made by the magistrate's court in this case were invalid on two grounds: first, because the magistrate had acted in excess of jurisdiction, and secondly, because in making the order *ex parte* without giving the person affected by the order an opportunity to be heard, he failed to comply with the requirements of natural justice;

(2) there was a breach of the rules of natural justice on the part of magistrate's court in that it did not give a hearing to the owner of the building before making an order under section 63(4) of the Ordinance. As this order empowered the chief building surveyor to demolish the building, the demolition if carried out would have deprived the owner of his property without his having been heard and this is contrary to the principle repeatedly recognised, and reaffirmed recently by the Judicial Committee in *Durayappah's* case,(3) that no man is to be deprived of his property without his having an opportunity of being heard, unless of course there are express words in the statute authorising deprivation without notice;

(3) as the respondent company had a direct and substantial interest in the matter and the two orders made by the magistrate's court were nullities, the respondent company clearly had *locus standi* to challenge the said orders.

Cases referred to:—

(1) *Cooper* v. *Wandsworth Board of Works* (1863), 14 C.B.N.S. 180; 143 E.R. 414.

(2) *Hopkins* v. *Smethwick Local Board of Health* (1890), 24 Q.B.D. 712.

(3) *Durayappah* v. *Fernando* [1967] 2 A.C. 337; [1967] 2 All E.R. 152; [1967] 3 W.L.R. 289.

(4) *Ridge* v. *Baldwin* [1964] A.C. 40.

(5) *Nakkuda Ali* v. *Jayaratne* [1951] A.C. 66.

FEDERAL COURT.

Lee Kim Siang (State Counsel) for the appellant.

Sachi Saurajen for the respondent.

Cur. Adv. Vult.

Choor Singh J. (delivering the judgment of the court): This is an appeal from a judgment of the Hgh Court granting an order of *certiorari* to quash two orders made by a magistrate's court, an order made on the 4th day of October, 1967 under section 63(4) of the Local Government Integration Ordinance, 1963 ("the Ordinance") authorising the chief building surveyor either to demolish the building known as 19/20 Malacca Street, Singapore, or to take such steps as appear to the chief building surveyor to be necessary to make the building secure, and another order of the same magistrate's court made on the 30th day of October, 1967 under section 63(5) of the Ordinance prohibiting the said building from "being used for human habitation."

The facts are not in dispute. The respondent company is a tenant of the ground floor of No. 20 Malacca Street, where it carries on business as importers, exporters and commission agents. It has been in occupation of these premises for more than 25 years. On the 4th October, 1967 the chief building surveyor, Singapore, swore a complaint before the ninth magistrate's court, Singapore, alleging that due to structural defects the building in question was in danger of collapse. Attached to the complaint was a certificate of the assistant building surveyor regarding the structural condition of the building. It was in the following terms:—

"I, the undersigned, hereby certify that I have inspected on 3.10.67 building No. 19/20 Malacca Street, known as Namazie Building which is situated at the junction of Malacca Street and a back lane.

I have found that the building is in danger of collapse due to structural defects in the structure — there are big cracks from five-foot-way level to almost roof level in the East wall; rear part of West wall is cracked, out of plumb and bulging towards the back lane; structural cracks in some beams; a good number of floor joints of 2nd floor are sagging; one column on the 2nd floor is out of plumb.

Immediately adjacent to the back wall of the Namazie Building there is a free standing wall ex-